

Wage and Hour Division, Labor

§ 575.6

established by the Environmental Protection Agency, and followed by other Federal and State agencies, were established for adult workers and have not been shown to be safe for 10 and 11 year olds. Therefore, the applicant, in order to satisfy this condition, will either have to submit a statement that no pesticides or other chemicals were used on the crop to be harvested or submit data which upon study by the Secretary or the Secretary's designee establishes a safe reentry times for 10 and 11 year olds. If such data, or additional studies conducted by the Secretary or the Secretary's designee, establish safe reentry standards for 10 and 11 year olds, this section will be amended to include such standards and the applicant will then need only identify the type and level of pesticides or chemicals used and the date of last application of same prior to harvest.

(e) Individuals age 12 and above are not available for such employment. Evidence of such unavailability must be documented by the applicant by:

(1) Placement of intrastate and interstate job orders, in which the piece rate is specified, with the state employment service sufficiently in advance of the harvest to allow reasonable time for the recruitment of local and migrant workers. An interstate order need not be placed if the applicant can demonstrate that suitable housing is not available.

(2) Placement of at least two advertisements in local papers of general circulation or advertisements over local radio stations.

(3) Contact with farm labor contractors, migrant workers, and other potential workers.

(4) Contact with schools, business and labor organizations, non-profit organizations and public agencies to enlist their help. Data showing the responses received to these solicitations must be categorized by age and submitted with the waiver application to verify that older workers are not available to perform the work.

(f) The "industry of such employer or groups of employers has traditionally and substantially employed individuals under twelve years of age without displacing substantial job opportunities for individuals over sixteen years of

age." Documentation that the industry has traditionally and substantially employed individuals under 12 years of age may include newspaper reports, magazine articles, research organization reports, or other appropriate sources. Data to indicate that such employment did not displace substantial job opportunities for individuals over 16 years of age may include the signed statement of an appropriate official of the employment service agency of the State (or States, if region designated crosses State lines) certifying to that fact. This certification must be based on statistical documentation for at least the previous year.

(g) When supporting data required by this section are submitted by an employer or group of employers, the objective data required by paragraph (d) of this section shall be submitted on the basis of each individual employer. However, objective data required by paragraphs (a), (b), (c), (e), and (f) of this section may be submitted for the specific geographic area, e.g., an entire county, of the employer or group of employers.

[43 FR 26562, June 21, 1978; 43 FR 28471, June 30, 1978, as amended at 44 FR 22061, Apr. 13, 1979; 44 FR 24059, Apr. 24, 1979; 44 FR 29049, May 18, 1979; 45 FR 55177, Aug. 19, 1980]

§ 575.6 Procedure for action on an application.

(a) Upon receipt of an application for a waiver, the Administrator shall review all of the information and supporting data. If sufficient, the Administrator shall grant a waiver; if insufficient, the Administrator may seek further information. If such information is not made available to the Administrator, the Administrator shall deny the waiver.

(b) The Administrator shall deny the application for a waiver from any employer against whom a final civil money penalty is outstanding under section 16(e) of the Act for violation of the child labor provisions of the Act.

(c) The waiver, in the form of a letter signed by the Administrator, shall set forth the terms and conditions for employment under the waiver as provided in §§ 575.7 and 575.8. The waiver shall be issued to the employer or group of employers applying for it.

(d) If a waiver is granted there will be published in the FEDERAL REGISTER a general notice to that effect setting forth for each waiver granted: the name of the employer or the name of each employer of a group of employers; the address of each such employer, including city, state, and zip code; and the dates of the period the waiver will be in effect.

(e) If a waiver is denied, the Administrator shall give written notice of such denial to the employer or group of employers applying for a waiver. Such denial will be without prejudice to the filing of any subsequent application.

§ 575.7 Statutory conditions for employment under the waiver.

Any waiver granted pursuant to section 13(c)(4) of the Act and this part shall require that:

(a) Employment of 10 and 11 year old minors pursuant to the waiver be outside school hours.

(b) Individuals employed commute daily from their permanent residence to the farms(s) or field(s) where employed.

(c) Such individuals be employed for not more than 8 weeks between June 1 and October 15 of any calendar year. When schools are in session, any employment under a waiver shall be confined to outside of school hours.

§ 575.8 Secretary's conditions for employment under the waiver.

The Secretary prescribes the following terms and conditions for the protection of minors employed pursuant to a waiver granted under section 13(c)(4) of the Act:

(a) An employer or group of employers granted such a waiver shall obtain and keep on file a signed statement of the parent or person standing in the place of the parent of each 10 and 11-year old minor employed consenting to the employment of such minor under the waiver.

(b) Any employment pursuant to a waiver shall be in compliance with applicable Federal and State laws, and any regulations issued under them.

(c) No employer or group of employers shall employ any 10 or 11 year old minor pursuant to a waiver for more than 5 hours in any one day or for more

than 30 hours in any workweek with a meal break of at least 30 minutes and two rest breaks of at least 15 minutes each.

(d) An employer or group of employers granted such a waiver shall provide immediately adjacent to the field(s) to be hand harvested: (1) Adequate sanitary facilities, such as portable toilets; (2) adequate and clean drinking water in covered containers with spouts, and an adequate supply of paper or plastic cups for individual drinking use; and (3) a specified adult employee, who is appropriately equipped and is knowledgeable about first-aid treatment and readily available to give such treatment when needed.

(e) An employer or group of employers granted such a waiver shall provide emergency transportation either to the minor's permanent residence or to the nearest hospital for any 10 or 11 year old hand harvester who becomes ill or is injured during the normal hours of employment.

(f) No 10 or 11 year old employed under a waiver shall ride upon or be employed in the operation of or in the close proximity to any power driven machinery or equipment. Generally, a distance of fifty feet or more will be construed to meet the requirement that employment not be in "close proximity" to machinery or equipment.

(g) An employer or group of employers granted such a waiver who owns, operates, or causes to be operated any vehicle for the transportation of such minors shall be responsible for assuring that:

(1) Every such vehicle is in compliance with all applicable Federal and State safety and health standards and with the rules and regulations issued by the Bureau of Motor Carrier Safety, Federal Highway Administration of the U.S. Department of Transportation;

(2) Every such vehicle be designed for transporting passengers and be operated by a lawfully licensed driver; and

(3) A vehicle liability insurance policy provides insurance in an amount not less than the amounts applicable to vehicles used in the transportation of passengers under the Interstate Commerce Act and its regulations. These amounts currently are as follows: